IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.231 OF 2013
IN
CIVIL REVISION APPLICATION NO.20 OF 2013

Jasumatiben Hakimchand Jhatakia and others … Applicants
Vs.
Narendra B. Mantri … Respondent

Mr. R. A. Thorat, Senior Advocate i/b. Mr. P. J. Thorat for Applicants.
Mr. P. K. Dhakephalkar, Senior Advocate i/b. Mr. Kunal Bhanage for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 3, 2016

P.C. :

Heard Mr. Thorat, learned Senior Counsel for applicants and Mr. Dhakephalkar, learned Senior Counsel for respondent at length.

2. This is an Application under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for producing documents at exhibits 'A' to 'C'. Mr. Thorat submitted that documents at exhibit-A are the income tax returns filed by the applicants-defendants from the assessment year 1997-1998 till 2011. He submitted that on 01.04.1997, Deed of Partnership was executed between the original tenant - Hakimchand Jhatakia and Ramniklal Desai and others. Agreement was also executed on 06.05.1998 after the death of the original tenant. After much efforts, defendants have procured the partnership deed and the agreement.

3. Applicants have further contended that Registration Certificate of Siddharth Plastics was issued on 01.04.1996 which shows that business is carried out in the suit premises in the name of Siddharth Plastics.

Documents at exhibits 'A' to 'C' will show that applicant No.1 is carrying on business in the suit premises in the name and style of Siddharth Plastics. While recording the finding on the question of hardship, the Courts below have recorded that as applicant No.1 is not carrying on business from the suit premises, no hardship will be caused to the defendants in the event of passing of eviction decree. He submitted that despite exercise of due diligence, the documents could not be produced, and therefore, applicants-defendants may be permitted to produce these documents.

4. Mr. Dhakephalkar opposed the application and submitted that no case is made out for permitting the defendants to produce additional evidence.

5. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. The Suit instituted by the plaintiff is decreed by the trial Court on 21.08.2009 and by the appellate Court on 31.10.2012. Defendants seek to produce income tax returns from the assessment year 1997-1998 till 2011. No explanation is given as to why these returns were not produced even before the trial Court and / or appellate Court. As far as the the Registration Certificate dated 01.04.1996, Partnership Deed dated 01.04.1997 and agreement dated 06.05.1998 are concerned, even in respect of these documents, no explanation is given for not producing the documents in the trial Court as also in the appellate Court. After considering the reasons given in the Application, I do not find any case is made out for production of additional evidence.

6. In the case of ***Union of India. Vs. Ibrahim Uddin***, **(2012) 8 SCC 148**, the Apex Court has exhaustively dealt with provisions of Order 41,

Rule 27 of C.P.C. in paragraphs 36 to 49. In paragraph 36, the Apex Court observed that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. Order 41, Rule 27 of C.P.C. enables the appellate Court to take additional evidence in exceptional circumstances. The appellate Court may permit additional evidence only and only if the conditions laid down in the Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. In paragraph 39, it was observed that when a party had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot be allowed to produce it in appeal. The inadvertence of the party of realizing the importance of document does not constitute a substantial cause. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

7. In view thereof, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab